

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Cr. No. 18-CR-2945 WJ
	)	
JANY LEVEILLE,	)	
SIRAJ IBN WAHHAJ,	)	
LUCAS MORTON,	)	
HUJRAH WAHHAJ, and	)	
SUBHANAH WAHHAJ,	)	
	)	
Defendants.	)	

**UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE CIPA SECTION 4**  
**MOTION AND RESPONSE TO DEFENSE MOTION TO COMPEL THE**  
**GOVERNMENT TO PRODUCE RULE 16 AND BRADY-GIGLIO DISCOVERY AND**  
**DISCOVERY GOVERNED BY CIPA**

For the reasons described below, the United States of America respectfully requests an extension of time in which to file its motion under Section 4 of the Classified Information Procedures Act (CIPA) and to respond to the Defendants’ interrelated “Motion To Compel the Government to Produce Rule 16 and Brady-Giglio Discovery and Discovery Governed by CIPA,” (Doc. 702) filed on March 31, 2023. In support of this motion, the Government provides as follows:

1. A responsive pleading to the Defendants’ motion to compel discovery is due April 14, 2023. However, the Defendants’ motion seeks to compel the production of classified information, and also requests the Court order the insertion of defense counsel with no security clearance and no need-to-know into the classified

discovery process. In addition to addressing them in its response to the motion to compel discovery, many of the arguments in the motion to compel will be addressed in whole or in part in the Government's forthcoming CIPA Section 4 motion, though largely by dint of the usual explication of the CIPA process.

2. However, because of the DOJ and FBI review and approval requirements related to the Government's CIPA Section 4 motion (described below) and the overlapping of many subjects with the Government's response to the motion to compel discovery, the United States' response to the motion to compel also requires review and approval from the National Security Division of the Department of Justice. That said, the United States seeks only an additional two weeks to accomplish this, setting the extended filing deadline as April 28, 2023.
3. Pursuant to the current Scheduling Order, the parties and Court anticipated that CIPA litigation would be "substantially complete" by April 28, 2023. In addition, at the CIPA Section 2 pretrial conference on February 9, 2023, the Court asked the Government to make efforts to file its CIPA Section 4 motion some time prior to the April 28 deadline. The United States stated that it would strive to file the motion before the deadline if it could.
4. To that end, the Government has worked extremely hard to draft the Section 4 motion as early as possible, while also responding to continual filings of legal motions by the Defendants well past the deadlines in the scheduling order and preparing for litigation and hearings in this case on other issues.
5. Aiming to file the CIPA Section 4 motion earlier than April 28, 2023, the

Government provided a completed draft of the motion to the Counterterrorism Section (CTS) of the National Security Division of the Department of Justice, and to attorneys at the National Security and Classified Litigation Branch (“NSCLB”) of the FBI on April 10, 2023.

6. The NSCLB and CTS representatives have since communicated that, because the CIPA Section 4 motion requires a declaration from an Assistant Director of the FBI to assert and articulate the classified information privilege over the specific information at issue, there are several levels of review and approval required before the Assistant Director can sign the required declaration.
7. In order to provide enough time for the appropriate offices within the National Security Division and the FBI to review and approve the United States’ CIPA Section 4 motion, the United States requests an extension until Thursday, June 15, 2023, to file the motion. This date is based on input from the NSCLB and NSD. However, the United States hopes to file the CIPA Section 4 motion before that date, as the approvals and signed declaration are received.
8. The Defendants will not be prejudiced by this extension because there should be no additional discovery produced upon the filing of the CIPA Section 4 motion or upon its adjudication by the Court. Thus, the Defendants will be in the same position they are now, and the same position they would be if the CIPA Section 4 motion was filed on April 28. There will also be no classified information produced in discovery.
9. Moreover, with the extension of time to file its unclassified response to the

motion to compel discovery, the United States will describe why the information (which happens to be classified) is not discoverable at all, even under normal, routine, unclassified discovery standards. Depending on the Court's ruling on the discoverability in the first instance of the materials sought in the Defense's motion to compel, that may suffice to handle all but a very small amount of information that will be addressed solely in the CIPA Section 4 motion.

However, even this remaining small amount of information is subject to deletion under CIPA and would not be produced to the Defendants.

10. In addition, the extension will allow the Defendants to provide any explanation of their defense theories so that the Court is more able to view the information in the Government's CIPA Section 4 motion from the Defendants' perspective. The Government does not oppose the Defendants providing their theories of defense to the Court in an *ex parte* manner in order to give the Court their perspective before the Court reviews the Government's CIPA Section 4 motion.
11. Finally, the requested extensions will benefit all parties and the Court by allowing for a more fulsome unclassified reponse by the United States to the motion to compel discovery, which in turn will potentially reduce the need for as detailed an explanation in the Government's *ex parte* CIPA Section 4 motion.
12. The United States requested the Defendants' position on the requested extensions, and all of the Defendants do not oppose the Government's request.

WHEREFORE, the United States respectfully requests an extension of time until Thursday, June 15, 2023, to file its CIPA Section 4 motion, and an extension of time until April

28, 2023, to respond to the Defendants’ “Motion To Compel the Government to Produce Rule 16 and Brady-Giglio Discovery and Discovery Governed by CIPA,” (Doc. 702).

Respectfully submitted,

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*/S/ Electronically filed*  
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I HEREBY CERTIFY that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification to defense counsel.

*/S/ Electronically filed*  
TAVO HALL  
Assistant United States Attorney